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WASHINGTON, DC 20515

*Rec'd*  
*5/13/86*

THOMAS K. LATIMER, STAFF DIRECTOR  
MICHAEL J. O'NEIL, CHIEF COUNSEL  
STEVEN K. BERRY, ASSOCIATE COUNSEL

May 13, 1986

NOTE FOR: James S. Cowen (SGAC)  
J. Pierce Myers (HPO&CSC)  
John Nelson (SSCI)  
George Owens (CIA)

FROM: Michael J. O'Neil   
Chief Counsel

SUBJECT: Recommended Changes to Draft Retirement Legislation

We have reviewed the May 12, 1986/9:00 a.m. Discussion Draft of the Federal Employees' Retirement System Act ("FERS Titles Draft") and the Senate Legislative Counsel draft 079920.193 of Title IV relating to CIA retirement ("CIA Title Draft") we received on May 12.

Attached are six recommended changes to the drafts. Changes Nos. 1 and 2 are merely grammatical corrections; Change No. 3 is a technical correction; Change No. 4 is a minor substantive change relating to access to intelligence information; and Changes Nos. 5 and 6 strike CIA-related provisions in the FERS Title Draft which are inconsistent with corresponding provisions in the CIA Title Draft.

For your convenience, we have enclosed the relevant pages of the drafts marked to show the attached changes.

May 13, 1986  
10:00 a.m.

HPSCI RECOMMENDED CHANGES TO RETIREMENT LEGISLATION

References: (1) "CIA Title Draft"—draft 079920.193, S.L.C., Title IV (CIA),  
received by HPSCI May 12, 1986

(2) "FERS Titles Draft"—Discussion Draft FERS, dated May 12  
1986/9:00 a.m.

Change No. 1: CIA Title Draft

Change: Page 9, line 20, insert "to" after "pursuant".

Reason: Grammatical.

Change No. 2: CIA Title Draft

Change: Page 11, line 11, insert "the" after "to".

Reason: Grammatical.

Change No. 3: CIA Title Draft

Change: Page 13, line 18, insert "under this section" after "administration".

Reason: Technical. Makes clear that Section 201(c) of the CIA Retirement Act (relating to DCI decisions) applies in the administration of chapter 84 of title 5 only as chapter 84 is applied to CIA personnel. (See the parallel chapter 83 provision on page 17, lines 3 - 6, which properly contains corresponding "under this subsection" language.) [Note: the "under this section" language of this Change No. 3 was contained in HPSCI/SSCI proposed Change No. 12, dated May 5, 1986, to the Initial Discussion Draft, and probably was omitted inadvertently from the "CIA Title Draft."]

Change No. 4: CIA Title Draft

Change: Page 13, line 25, insert ", 8461(h)(1)" after "8439(b)".

Reason: New Section 305(e) of the CIA Retirement Act contained in the CIA Title Draft is intended to ensure that non-intelligence agency access to intelligence information is handled consistently with the protection of intelligence sources, methods and activities. Section 305(e) as currently contained in the "CIA Title Draft" covers section 8439(b) relating to independent qualified public accountant access to intelligence information and section 8474(c)(4) relating to Executive Director/Thrift Plan access. This Change No. 4 extends the same provision to cover section 8461(h)(1) relating to OPM access. This ensures that security clearance and physical security practices normally applicable to intelligence information will apply under these statutory access provisions. [We overlooked section 8461(h)(1) in fashioning our Change No. 12 1/2 dated May 9, 1986 to the Initial Discussion Draft of the CIA Title; this Change No. 4 to the CIA Title Draft adds the reference to the overlooked section to the Change No. 12 1/2 provision.]

Change No. 5: FERS Titles Draft

Change: Page 94, beginning line 13, strike all of subsection 8461(j).

Reason: New Section 305 of the CIA Retirement Act (CIA Title Draft, page 11, beginning line 25) contains the provision necessary to achieve the objective of transferring from OPM to CIA responsibility for administering chapter 84 with respect to CIA personnel, to improve security. The text of Section 305 of the CIA Title Draft is substantially preferable to the text of subsection 8461(j) in the FERS Titles Draft for achieving the desired security goal.

Change No. 6: FERS Titles Draft

Change: Page 125, beginning line 12, strike subsection 206(i).

Reason: Section 406 of the CIA Title Draft (page 15, beginning line 10) contains the provision necessary to achieve the objective of transferring from OPM to CIA responsibility for administering chapter 83 with respect to CIA personnel, to improve security. The text of section 406 of the CIA Title Draft is substantially preferable to the text of subsection 206(i) of the FERS Titles Draft for achieving the desired security goal.

079920.193

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S.I.C.

"CIA Title Draft"

1       “(3) Subsections (c) and (d) of section 234 (in the  
2       case of any lump-sum payment under section [8424(a)] of  
3       title 5, United States Code, and any payment under  
4       subsection (b)(3), (b)(4), (c)(3), (c)(4), or (d) of  
5       section [8433] of such title).

6       “(4) Section 263(b).

7       “(d) In the application of section 222(a) under  
8       subsection (c)(1)--

9       “(1) the reference in paragraph (4)(B) of such  
10       section to section 271, 272, or 273 of this Act shall be  
11       deemed to refer to any similar provision of law  
12       applicable to such officer or employee for purposes of  
13       chapter 84 of title 5, United States Code;

14       “(2) the amount of the reduction in the salary of a  
15       recalled or reinstated officer or employee under such  
16       paragraph (4)(B) shall be only the amount by which the  
17       annuity under subchapter II or V of chapter 84 of title  
18       5, United States Code, would have been reduced; and

19       “(3) amounts to be deposited in the Treasury of the  
20       United States pursuant <sup>to</sup> such paragraph (4)(3) shall be  
21       credited to the Civil Service Retirement and Disability  
22       Fund.

Change  
No. 1

23       “(e) In the application of subsections (b) and (c) of  
24       section 222 under subsection (c)(2)--

25       “(1) the percentage prescribed in subsections

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S.I.C.

: "CIA Title Draft"

1 II or V of chapter 84 of title 5, United States Code,  
 2 to the survivor annuity provided in section [8442] of  
 3 title 5, United States Code; and

4 "(B) in the case of an annuity under subchapter  
 5 III of such chapter, to the survivor annuity  
 6 described in section [8435(c)] of such title; and

7 "(5) the fund referred to in subsections (c)(3)(A)  
 8 and (c)(3)(B) of such section shall be deemed to refer--

9 "(A) in the case of an annuity under subchapter  
 10 II or V of chapter 84 of title 5, United States Code,  
 11 <sup>the</sup> to Civil Service Retirement and Disability Fund; and  
 12 ^

Change  
 No. 2

12 "(B) in the case of an annuity under subchapter  
 13 III of such chapter, the Thrift Savings Fund  
 14 established by section [8437] of such title.

15 "(f) A reduction in the annuity of an officer or  
 16 employee of the Agency to provide a survivor annuity or  
 17 survivor annuities under this section shall be computed as  
 18 provided in section [8419(a)] of title 5, United States Code.

19 "(g) The entitlement of a former spouse to a portion of  
 20 an annuity of a retired officer or employee of the Agency  
 21 under this section shall extend to any annuity supplement  
 22 that such officer or employee is entitled to receive under  
 23 section [8421] of title 5, United States Code.

#### 24 "ADMINISTRATIVE PROVISIONS

25 "Sec. 305. (a)(1) Notwithstanding any provision of

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S.I.C.

*"CIA Title Draft"*

1 and employees; and

2 "(C) make the necessary disbursements from, and the

3 necessary allocations of earnings, losses, and charges

4 to, individual accounts of such officers and employees

5 under the Thrift Savings Plan.

6 "(b) The Executive Director of the Federal Retirement

7 Thrift Investment Board may not exercise authority under

8 chapter 84 of title 5, United States Code, in the case of

9 officers and employees of the Agency to the extent that the

10 Director exercises authority provided in subsection (a).

11 "(c) The Director of the Office of Personnel Management

12 and the Executive Director of the Federal Retirement Thrift

13 Investment Board shall furnish such information and services

14 to the Director of Central Intelligence as the Director of

15 Central Intelligence determines necessary to carry out this

16 section.

17 "(d)(1) Section 201(c) of this Act shall apply in the *Change*

18 administration of chapter 84 of title 5, United States Code. *No. 3*

19 *under this section*

20 "(2) Notwithstanding paragraph (1), section [8451(e)] of

21 title 5, United States Code, shall apply with respect to

22 officers and employees of the Agency who are not participants

23 in the Central Intelligence Agency Retirement and Disability

24 System and are not designated under section 302(a) of this

25 Act.

26 "(e) Sections [8439(b)] and [8474(c)(4)] of title 5,

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S.I.C.

"CIA Title Draft"

1 and employees; and

2 "(C) make the necessary disbursements from, and the  
3 necessary allocations of earnings, losses, and charges  
4 to, individual accounts of such officers and employees  
5 under the Thrift Savings Plan.

6 "(B) The Executive Director of the Federal Retirement  
7 Thrift Investment Board may not exercise authority under  
8 chapter 84 of title 5, United States Code, in the case of  
9 officers and employees of the Agency to the extent that the  
10 Director exercises authority provided in subsection (a).

11 "(C) The Director of the Office of Personnel Management  
12 and the Executive Director of the Federal Retirement Thrift  
13 Investment Board shall furnish such information and services  
14 to the Director of Central Intelligence as the Director of  
15 Central Intelligence determines necessary to carry out this  
16 section.

17 "(d)(1) Section 201(c) of this Act shall apply in the  
18 administration of chapter 84 of title 5, United States Code.

19 "(2) Notwithstanding paragraph (1), section [8451(e)] of  
20 title 5, United States Code, shall apply with respect to  
21 officers and employees of the Agency who are not participants  
22 in the Central Intelligence Agency Retirement and Disability  
23 System and are not designated under section 302(a) of this  
24 Act.

25 "(e) Sections [8439(b)] and [8474(c)(4)] of title 5,

, 8461(h)(1)

A

Change  
No. 4

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S.I.C.

"OLA Title Draft"

1 United States Code, shall be applied with respect to  
2 information relating to officers and employees of the Agency  
3 in a manner that protects intelligence sources, methods, and  
4 activities.

[Continuation  
of provision]

## "REGULATIONS

5  
6 "Sec. 306. (a) The Director, in consultation with the  
7 Director of the Office of Personnel Management and the  
8 Executive Director of the Federal Retirement Thrift  
9 Investment Board, shall prescribe in regulations appropriate  
10 procedures to carry out this title.

11 "(b) The regulations shall include procedures for (1)  
12 the Director of the Office of Personnel Management to inspect  
13 and audit disbursements from the Civil Service Retirement and  
14 Disability Fund, and (2) the Executive Director of the  
15 Federal Retirement Thrift Investment Board to inspect and  
16 audit disbursements from the Thrift Savings Fund.

17 "(c) The Director shall submit the regulations  
18 prescribed under subsection (a) to the Select Committee on  
19 Intelligence of the Senate and the Permanent Select Committee  
20 on Intelligence of the House of Representatives before the  
21 regulations take effect.

## "TRANSITION PROVISIONS

22  
23 "Sec. 307. (a) The Director shall issue regulations  
24 providing for the transition from the Central Intelligence  
25 Agency Retirement and Disability System to the Federal



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1       “(e)(1) Subject to paragraph (2), an administrative  
2 action or order affecting the rights or interests of an  
3 individual or of the United States under the provisions of  
4 this chapter administered by the Office may be appealed to  
5 the Merit Systems Protection Board under procedures  
6 prescribed by the Board.

7       “(2) In the case of any individual found by the Office  
8 to be disabled in whole or in part on the basis of the  
9 individual's mental condition, and that finding was made  
10 pursuant to an application by an agency for purposes of  
11 disability retirement under section 8451 of this title, the  
12 procedures under section 7701 of this title shall apply and  
13 the decision of the Board shall be subject to judicial review  
14 under section 7703 of this title.

15       “(f) The Office shall fix the fees for examinations made  
16 under subchapter V of this chapter by physicians or surgeons  
17 who are not medical officers of the United States. The fees  
18 and reasonable traveling and other expenses incurred in  
19 connection with the examinations are paid from appropriations  
20 for the cost of administering the provisions of this chapter  
21 administered by the Office.

22       “(g) The Office may prescribe regulations to carry out  
23 the provisions of this chapter administered by the Office.

24       “(h)(1) Each Government agency shall furnish the  
25 Director with such information as the Director determines

} [Provision  
referred to  
by Chaucer  
No. 4]

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1 necessary in order to administer this chapter.

2     "(2) The Director, in consultation with the officials  
3 from whom such information is requested, shall establish (by  
4 regulation or otherwise) such safeguards as are necessary to  
5 ensure that information made available under this subsection  
6 is used only for the purpose authorized.

[Continuation  
of  
provision]

7     "(i) In making a determination of 'actuarial  
8 equivalence' under this chapter, the economic assumptions  
9 used shall be the same as the economic assumptions most  
10 recently used by the Office (before the determination of  
11 actuarial equivalence involved) in determining the normal-  
12 cost percentage of the System.

Change  
No. 5.

13     "(j)(1) Notwithstanding any other provision of this  
14 chapter, the Director of Central Intelligence shall, in a  
15 manner consistent with the administration of this chapter by  
16 the Office--

17     "(A) determine entitlement to benefits under this  
18 chapter based on the service of employees of the Central  
19 Intelligence Agency;

20     "(B) maintain records relating to the service of  
21 such employees;

22     "(C) compute benefits under this chapter based on  
23 the service of such employees;

24     "(D) collect deposits to the Fund made by such  
25 employees, their spouses, and their former spouses; and

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1     (E) perform such other functions under this chapter  
 2     as the Director of Central Intelligence, with the  
 3     concurrence of the Director of the Office of Personnel  
 4     Management, determines to be appropriate.

[Continuation  
 of  
 provision  
 stricken]

5     (2) The Director of the Office of Personnel Management  
 6     may furnish such information and services to the Director of  
 7     Central Intelligence as the Director of Central Intelligence  
 8     requests to carry out paragraph (1).

9     §8462. Cost-of-living adjustments

10    (a) For the purpose of this section--

11    (1) the term 'base quarter', as used with respect  
 12    to a year, means the calendar quarter ending on September  
 13    30 of such year;

14    (2) the price index for a base quarter is the  
 15    arithmetical mean of such index for the 3 months  
 16    comprising such quarter; and

17    (3) the term 'percent change in the price index',  
 18    as used with respect to a year, means the percentage  
 19    derived by--

20    (A) reducing--

21    (i) the price index for the base quarter of  
 22    such year, by

23    (ii) the price index for the base quarter  
 24    of the preceding year in which an adjustment  
 25    under this subsection was made;

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(1) in paragraphs (1)(B) and (3), by inserting `` , or chapter 84 of this title, `` after ``subchapter``; and

(2) by adding at the end the following: ``In applying this subsection with respect to an employee or Member who becomes subject to chapter 84 of this title, entitlement to payment of the lump-sum credit shall be determined without regard to paragraph (1) or (3) if, and to the extent that, such lump-sum credit relates to service of a type described in clauses (i) through (iii) of section 302(a)(1)(C) of the Federal Employees' Retirement System Act of 1986.``.

(1) AMENDMENT TO SECTION 8347.--Section 8347 of title 5, United States Code, is amended by adding at the end thereof the following:

Change  
No. 6

(n)(1) Notwithstanding any other provision of this subchapter, the Director of Central Intelligence shall, in a manner consistent with the administration of this subchapter by the Office--

(A) determine entitlement to benefits under this subchapter based on the service of employees of the Central Intelligence Agency;

(B) maintain records relating to the service of such employees;

(C) compute benefits under this subchapter based on the service of such employees;

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1     (D) collect deposits to the Fund made by such  
 2 employees, their spouses, and their former spouses; and

3     (E) perform such other functions under this  
 4 subchapter as the Director of Central Intelligence, with  
 5 the concurrence of the Director of the Office of  
 6 Personnel Management, determines to be appropriate.

7     (2) The Director of the Office of Personnel Management  
 8 may furnish such information and services to the Director of  
 9 Central Intelligence as the Director of Central Intelligence  
 10 requests to carry out paragraph (1) of this subsection."

11     (j) AMENDMENTS TO SECTION 8348.--Section 8348(a) of title  
 12 5, United States Code, is amended--

13         (1) in paragraph (1)(A), by striking out  
 14 "subchapter;" and inserting in lieu thereof  
 15 "subchapter or by the provisions of chapter 84 of this  
 16 title which relate to benefits payable out of the  
 17 Fund;"

18         (2) in paragraph (1)(B)--

19             (A) by inserting "or 8462" after "8340"; and

20             (B) by striking out "title, and" and inserting  
 21 in lieu thereof "title or subchapters II and IV of  
 22 chapter 84 of this title, and"; and

23         (3) in paragraph (2), by striking out "chapter" and  
 24 inserting in lieu thereof "chapter, chapter 84 of this  
 25 title,".

*[continuation  
 of  
 stricken  
 provision]*